

Ms. LaDonna Castenuela
Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F, 1st Floor, Room 1101
Austin, Texas 78753

July 13, 2009

Re: TCEQ Docket No. 2007-1820-AIR and 2008-1210-AIR; Consolidated SOAH Docket
No. 582-08-0861; Application of NRG Texas Power LLC for State Air Quality Permit
79188 and Prevention of Significant Deterioration Permit PSD-TX-1072 and Hazardous
Air Pollutant Major Source (FCAA Para. 112(g)) Permit HAP-14

Dear Ms Castenuela:

Enclosed for filing in the above referenced and numbered cause is protestant Citizens for
Environmental Clean - Up's (CEC) Exceptions to State Office of Administrative Hearings'
Proposal for Decision and Order in the above referenced permit matter.

If you have any questions concerning this filing, please do not hesitate to contact me at (903) 389
- 5616.

Sincerely,

/s/
Charles E. Morgan, P.E., Inactive
Executive Director,
Citizens for Environmental Clean - Up (CEC)
609 E FM 489
Buffalo, Texas 75831

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2009 JUL 13 PM 4:38

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COMMISSION
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Enclosure (Original and 7 Copies) Exceptions to SOAH Proposal for Decision and Order

cc: (With Enclosure)
Certificate of Service Listing via e-mail
SOAH Law Judges Craig Bennett and Tommy Broyles via e-mail

SOAH DOCKET NO. 582-08-0861
TCEQ DOCKET NO. 2007-1820-AIR

APPLICATION OF NRG TEXAS
POWER, LLC FOR STATE AIR
QUALITY PERMIT 79188 AND
PREVENTION OF SIGNIFICANT
DETERIORATION AIR QUALITY
PERMIT PSD-TX-1072

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

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SOAH DOCKET NO. 582-08-4013
TCEQ DOCKET NO. 2008-1210-AIR

APPLICATION OF NRG TEXAS
POWER, LLC ; PROPOSED PERMIT
NO. HAP-14

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

CITIZENS FOR ENVIRONMENTAL CLEAN – UP'S EXCEPTIONS TO THE STATE OFFICE
OF ADMINISTRATIVE HEARINGS PROPOSAL FOR DECISION

TO: Administrative Law Judges Craig R. Bennett and Tommy L. Broyles

Comes now Citizens for Environmental Clean – Up (CEC) who hereby takes exception to Section IV. Discussion, Sub-Section C. Air Quality Modeling Issues, Item 6, and Item I. of the Proposed Order.

1. Item 6: Air Quality Modeling Issues:

a. CEC has consistently made the point in its Closing Brief and in Replies to NRG's Closing Brief that the background concentration data used for this NRG III project's air modeling analysis is improper and takes exception to the SOAH Proposal for Decision. The TCEQ Air Dispersion Modeling Team's (ADMT) September 4, 1998 screening background concentrations must be used in lieu of an inappropriate air monitor background concentration from Travis County since there is such a large difference in the sulfur dioxide (SO₂) 3 hour concentration in micro-grams per cubic meter for these two sources of background concentration data. The ADMT's September 4, 1998 letter's attached chart for SO₂ concentrations for the 3-hour period is 1040 micro-grams per cubic meter. This background concentration takes into account the Big Brown

I and II power plants that are within the radius of influence plus 50 kilometers because they were operating prior to the baseline date. The Big Brown I and II SO₂ concentrations are not taken into account in any NRG air modeling scenario. The Travis County air monitor background concentration for SO₂ of 17.89 micro-grams per cubic meter does not take into account any large point sources that were in operation before the baseline date, i.e. Big Brown I and II. Dr. Pakrasi testified that Big Brown I and II emissions are not included in his air modeling analysis, but that they are included in a baseline concentration. (Ref: Trial Testimony of February 24, 2009, pages 327, lines 12-21 and 328, lines 10- 22.) He did not indicate where that baseline concentration could be found, nor that it was used. Therefore, the ADMT Limestone County chart data for 3-hour SO₂ background concentration is most appropriate and conservative. The chart data should also be used for background concentration in analysis of other pollutants.

b. The main reason for including data that has Big Brown I and II in the background concentration in micro-grams per cubic meter is because of those power plants' enormous SO₂ emissions that contribute to the background concentration. The CEC Exhibit 2 shows 2006 emissions data for Freestone County and in particular for Big Brown I and II. The Big Brown I and II emissions for SO₂ was 96,221 tons per year. In CEC's Closing Brief, a comparison was made between Big Brown emissions and Harris County (Includes Houston) emissions to show how large Big Brown emissions are compared to a nonattainment area. Big Brown SO₂ emissions alone are almost four times greater than all of Harris County's and therefore, must be included somewhere in the background concentration or modeling analysis. Otherwise, air monitoring must be accomplished in the project area prior to issuance of a permit. Currently, there is no air monitor within Limestone III project radius of influence plus 50 kilometers.

c. Using the more appropriate 3-hour SO₂ background concentration data from the ADMT chart shows that the NAAQS limit will be exceeded. NRG's NAAQS Analysis Table 13-3 in Exhibit 6, page NRG 000220 shows a predicted SO₂ concentration from Project and Non-project Sources of 427.67 micro-grams per cubic meter that is added to a background concentration of 17.89 micro-grams per cubic meter obtained from the Travis County air monitor for a total of 445.56 micro-grams per cubic meter. With the predicted concentration of 427.67 micro-grams per cubic meter added to the more appropriate and conservative, for reasons stated previously, data from the ADMT chart of 1040 micro-grams per cubic meter for 3-hour SO₂ concentration, the total is 1467.67 micro-grams per cubic meter for 3-hour SO₂ concentration. This concentration exceeds the NAAQS limit of 1300 micro-grams per cubic meter.

d. The background concentration and modeling analysis form the basis for all the other analyses that follow. Because these were performed incorrectly with inappropriate data, all the analyses that follow are incorrect.

e. The Administrative Judges recommendation that the commission find the Travis County background data appropriately conservative for modeled conditions at the Limestone Station property have failed to realize the impact of emissions not modeled nor included in any analysis. The Big Brown I and II emissions and resultant background concentration overshadow all the total emissions area sources and point sources combined. In addition, none of the Permit By Rule facilities' emissions were included in any analysis. The once proposed point sources (power plants) although included in the data base analysis are so far away and outside the radius of influence plus 50 kilometers as to render the impact negligible except for the Proposed Big Brown III unit that was not built, thus adding a small impact.

f. Protestants concerns are that the Limestone Project area is already in noncompliance with the NAAQS. To add another power plant, even with the no net increase, will continue that condition. Therefore, preconstruction air monitoring in the area must be accomplished prior to issuance of the NRG III permit.

2. Order by the TCEQ:

a. Item 1. CEC takes exception to approval of State Air Quality Permit 79188 and Prevention of Significant Deterioration Air Quality Permit PSD-TX-1072 for the above stated reasons and requests the permit be denied.

b. Item 1.a. Page 48 of the Order. Special Condition No. 42:

CEC takes exception to the units of measure indicated for mercury emissions if this proposed permit is issued. The total emissions allowed for mercury should be expressed in pounds per year and not tons per year. The Limestone Station III proposed project emissions for mercury is 0.07 tons per year as per NRG Exhibit 6, Appendix B, Table 2. That mercury emission is 140 pounds per year. NRG's Mr. Craig Eckberg's letter dated November 29, 2007 shows that for mercury the total commitment to No Net Increase is limited to 1,084.5 **pounds per year**.

Respectfully Submitted,

Charles E. Morgan, P.E., Inactive
Executive Director,
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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing CEC's Exceptions to the State Office of Administrative Hearings' Proposal for Decision and Order on the following via mail or e-mail, as indicated, on this the 13th day of July, 2009.

____ Signed _____

Charles E. Morgan, P.E., Inactive
Exe. Dir., Citizens for Environmental Clean - Up

TCEQ, CHIEF CLERK Via Mail
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Chief Clerk
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FACSIMILE TRANSMITTAL SHEET

TO:	See Comments Below	FROM:	Wendi Hammond
COMPANY:	See Comments Below	DATE:	7/13/2009
FAX NUMBER:	See Comments Below	TOTAL NO. OF PAGES INCLUDING COVER:	
PHONE NUMBER:	See Comments Below	SENDER'S REFERENCE NUMBER:	
RE:	SOAH Docket No. 582-08-4013 TCEQ Docket No. 2008-1210-AIR		

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

On behalf of Charles Morgan, I'm faxing CEC's Exceptions:

The Honorable Administrative Law Judge Bennett	512/475-4994
The Honorable Administrative Law Judge Broyles	512/475-4994
SOAH Docket Clerk	512/475-4994
→ TCEQ Chief Clerk	512/239-3311
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The original & copies are being mailed
by Charles.